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Chief Executive Officer

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December 4, 2012

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

DEFINED CONTRIBUTION SAVINGS PLAN TECHNICAL ORDINANCE CHANGES (ALL SUPERVISORIAL DISTRICTS - 3 VOTES)

SUBJECT

Recommendation to approve minor technical changes to the provisions of the Savings Plan document, County Code Section 5.26, in order to preserve the tax-favored status of the Savings Plan (Plan).

IT IS RECOMMENDED THAT THE BOARD:

1. Approve changes to Title 5 – Personnel of the Los Angeles County Code by amending the Savings Plan to: (1) define a Leased Employee; (2) update the correction process for certain excess contributions; and (3) make a technical correction to a cross-reference in the Savings Plan document.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On June 27, 2012, the Internal Revenue Service issued a Favorable Determination Letter (FDL) approving the qualified status of the form of the Savings Plan. The FDL is contingent on the Board adopting the Plan amendments in the accompanying ordinance.

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Technical Changes

This letter and the accompanying ordinance will make minor technical changes to the provisions of the Savings Plan by: (1) defining a "Leased Employee," instead of incorporating the definition by reference to Internal Revenue Code Section 414(n); (2) updating the method for correction of excess Annual Additions made on and after July 1, 2007; and (3) making a technical correction to a cross-reference in the Savings Plan document.

While the changes have no effect on Plan administration, the Internal Revenue Service requires they be made in order to preserve the tax-favored status of the Plan.

Implementation of Strategic Plan Goals

The recommended changes are consistent with the Countywide Strategic Plan Goal, Organizational Effectiveness, and demonstrate the Plan's adherence to regulatory compliance and fiduciary responsibility.

FISCAL IMPACT/FINANCING

The aforementioned technical changes are administrative in nature and have no fiscal impact to the County or Savings Plan participants and beneficiaries.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Savings Plan was established as a tax-favored defined contribution plan that must comply with existing tax law and regulatory requirements. County Code Section 5.26 serves as the federally required Savings Plan document which must be amended when necessary to maintain the Plan's tax-favored status. Under County Code Section 5.26.540, the Plan's qualified status is subject to the issuance of an Internal Revenue Service determination or ruling that the Plan document, as amended and restated (and as modified by any amendment made for the purpose of securing such determination or ruling) meets the applicable requirements of Sections 401(a) and 401(k) of the Code for a qualified governmental plan. Said determination, in the form of a FDL, was received on June 27, 2012, and is contingent upon the Plan making minor technical changes to the Savings Plan document. Under County Code Section 5.26.500, the Board of Supervisors reserves the right, without the consent of any Participant, Beneficiary, or other person, to amend the Plan in whole or in part.

The proposed ordinance changes have been approved as to form by County Counsel.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The adoption of the attached ordinance changes will preserve the qualified status of the Savings Plan, thereby, allowing the Plan to continue operating in the best interest of Plan participants and beneficiaries.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Fujioka', with a stylized flourish at the end.

WILLIAM Y FUJIOKA
Chief Executive Officer

WTF:BC:JA
MTK:SM:mst

c: Executive Office, Board of Supervisors
County Counsel
Auditor-Controller
Treasurer and Tax Collector
Human Resources
Savings Plan Administrative Committee


ANALYSIS

This ordinance amends Title 5 – Personnel of the Los Angeles County Code by amending the provisions of the County of Los Angeles Savings Plan to:

- Define Leased Employee without incorporating the definition by reference to Internal Revenue Code Section 414(n);
- Update the method for correction of excess Annual Additions made on and after July 1, 2007; and
- Make a technical correction to a cross-reference in the Savings Plan.

JOHN F. KRATTLI
County Counsel

By:



RICHARD D. BLOOM
Principal Deputy County Counsel
Labor & Employment Division

RDB:asv

Requested: 8-23-12

Revised: 10-09-12

ORDINANCE NO. _____

An ordinance amending Title 5 - Personnel of the Los Angeles County Code, relating to the provisions of the County of Los Angeles Savings Plan.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 5.26.020 is hereby amended to read as follows:

5.26.020 Definitions.

The following terms when used herein with initial capital letters, unless the context clearly indicates otherwise, shall have the following respective meanings:

...

22. "Employee" means any person who: (a) has been determined by the County (regardless of any determination made by any other person or entity) to be an employee of the County within the meaning of Code Section 3401(c) for federal income and/or employment tax purposes; or (b) is a Leased Employee as defined in subsection 324 of this section and as provided in Section 5.26.055. If it is determined that an individual was erroneously categorized as not being an Employee, he or she shall be treated as an Employee under the Plan only prospectively from the date of such determination.

...

32. "Leased Employee" means any person described in Code Section 414(n)(2) for the purpose of the plan qualification requirements listed in Code Section 414(n)(3); (other than an Employee of the recipient) who, pursuant to an agreement between the recipient and any other person (leasing organization), has performed

services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one (1) year, and such services are performed under the primary direction or control by the recipient employer. A Leased Employee shall not be considered an Employee of the recipient if Leased Employees do not constitute more than 20 percent of the recipient's nonhighly compensated workforce and such Leased Employee is covered by a money purchase pension plan providing (i) a nonintegrated employer contribution rate of at least ten (10) percent of compensation as defined under Code Section 415(c)(3); (ii) immediate participation; and (iii) full and immediate vesting.

...

SECTION 2. Section 5.26.055 is hereby amended to read as follows:

5.26.055 Leased Employees; Inclusion as Employee.

~~A. Inclusion as Employee.~~ A Leased Employee shall be treated as an Employee only for the purposes of the plan qualification requirements listed in Code Section 414(n)(3).

Notwithstanding the foregoing, contributions, or benefits provided to a Leased Employee by a leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

~~B. Exception. Subsection A shall not apply to any Leased Employees if the safe harbor set forth in Code Section 414(n)(5) applies.~~

SECTION 3. Section 5.26.160 is hereby amended to read as follows:

5.26.160 Provision Pursuant to Code Section 415(c).

A. Definitions. For the purposes of this Section 5.26.160 and Section 5.26.170, the following definitions apply:

1. "Annual Addition" means the sum of the following amounts credited to a Participant's account for any Limitation Year: (a) all contributions made by the County to any qualified defined contribution plan maintained by the County, (b) all contributions made by the Participant to any qualified defined contribution plan maintained by the County, (c) all forfeitures under any qualified defined contribution plan maintained by the County, and (d) contributions to an individual medical benefit account (as defined in Code Section 415(l)(2)) of a Participant that is part of a pension or annuity plan maintained by the County (except that the 25 percent of 415 Compensation limit, or, for Limitation Years beginning on or after January 1, 2002, the 100 percent of 415 Compensation limit, does not apply to such an individual medical benefit account).

2. "County" means any entity the employees of which, together with employees of the County, are required to be treated as if they were employed by a single employer under Code Sections 414(b), (c), (m) or (o) (taking into account any adjustment made pursuant to Code Section 415(h)), and any entity whose employees are treated as employees of the County under Code Section 414(n).

3. "Limitation Year" means the twelve consecutive month period used by a Qualified Plan for the purposes of computing the limitations on benefits and annual additions under Code Section 415. The Limitation Year for this Plan is the Plan Year.

B. Limit on Contributions. Notwithstanding any other provisions of the Plan for Limitation Years beginning before January 1, 2002, the Annual Addition for a Participant for any Limitation Year shall in no event exceed the lesser of (a) \$30,000.00 or such higher adjusted amount as shall be prescribed by the Secretary of the Treasury pursuant to Code Section 415(d) to reflect increases in the cost of living, or (b) 25 percent of the Participant's 415 Compensation during the Plan Year. For Limitation Years beginning on or after January 1, 2002, except to the extent permitted under Section 5.26.060B regarding Catch-Up Contributions and Code Section 414(v), the Annual Addition for a Participant for any Limitation Year shall not exceed the lesser of (y) \$40,000, as adjusted for increases in the cost-of-living under Code Section 415(d), or (z) 100 percent of the Participant's 415 Compensation for the Plan Year.

C. Excess Annual Additions.

1. For Limitation Years beginning before July 1, 2007, if, as a result of the allocation of forfeitures, a reasonable error in estimating a Participant's Compensation, a reasonable error in determining the amount of elective deferrals under Code Section 402(g)(3), or under other limited facts and circumstances that the Commissioner of Internal Revenue finds justify the availability of the rules set forth in Treasury Regulation Section 1.415-6(b)(6), If a Participant's Annual Additions would

exceed the limitations of subsection B for a Limitation Year, After-Tax Contributions (if any) made by the Participant for such Plan Year (together with any gains attributable thereto) shall be returned to him to the extent necessary to satisfy the limitations of subsection B. If return of such After-Tax Contributions is insufficient to cause the limitations of subsection B to be satisfied, as soon as practicable following the Limitation Year a portion of the Termination Pay Contribution (if any) made for such Participant for such Limitation Year (together with gains attributable thereto) shall be treated as an Employee contribution not eligible to be picked up under Part 5 and returned to him as a corrective disbursement to the extent necessary to satisfy the limitations of subsection B. If return of such Termination Pay Contribution is insufficient to cause the limitations of subsection B to be satisfied, Matching Contributions allocable to such Participant's Account for such Limitation Year shall, to the extent necessary to cause the limitation in subsection B to be satisfied, be held in a suspense account and used to reduce Matching Contributions for the next Limitation Year for that Participant if such Participant is covered by the Plan at the end of such Limitation Year; and if he is not covered by the Plan at the end of any such Limitation Year, the Matching Contributions held in the suspense account shall be allocated and reallocated pro rata (based on each Participant's Eligible Earnings) to the Accounts of other Participants, except that such allocation or reallocation shall not cause the limitations of subsection B to be exceeded for any other Participant for any other Limitation Year. Investment gains and losses shall not be allocated to the suspense account during the period such suspense account is required to be maintained. In the event of the termination of this Plan while

there exists a balance in the suspense account, to the extent such balance cannot be allocated to Participant's Account without violating the limitations of this section, such balance shall revert to the County. If the allocation of Matching Contributions to the suspense account as described herein is not sufficient to cause the limitations of subsection B to be satisfied, Tax Deferred Contributions (other than Catch-Up Contributions) made for such Participant for such Limitation Year (together with gains attributable thereto) shall be returned to him to the extent necessary to satisfy the limitations under subsection B. In the event a reduction is necessary to satisfy subsection B, and the Participant participates in two or more defined contribution plans maintained by the County, the excess amount to be reduced will be deemed to consist of the Annual Addition last allocated. If an excess amount was allocated to a Participant on an allocation date of this Plan that coincides with an allocation date of another plan, the excess amount attributed to this Plan (to be reduced as provided above) will be the product of (1) the total excess amount allocated as of such date, and (2) the ratio of the Annual Addition allocated to the Participant for the Limitation Year under this Plan to the total Annual Additions allocated to the Participant for the Limitation Year for this and all other qualified defined contribution plans.

2. Notwithstanding the foregoing, for Limitation Years beginning on or after July 1, 2007, if Annual Additions on behalf of any Participant in a Limitation Year to this Plan and all other defined contribution plans maintained by the County exceed the limitations of subsection B, such excess shall be corrected

according to the Internal Revenue Service's Employee Plans Compliance Resolution System, or any successor correction program.

D. Aggregation of Plans. For the purposes of applying the limitations set forth in this Section 5.26.160 and Section 5.26.170, all qualified defined benefit plans (whether or not terminated) ever maintained by the County shall be treated as one defined benefit plan, and all qualified defined contribution plans (whether or not terminated) ever maintained by the County shall be treated as one defined contribution plan.

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